Testimony Before the Committee on Commerce, U.S. House of Representatives

Subcommittee on Health and Environment

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Hearings on FDA Reform

Honorable Michael Bilirakis
Chairman

Testimony by

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Synopsis

Within the topic of FDA reform, five areas are worth special discussion:

1) The Commissioner. The Commissioner should primarily focus on the speed and efficiency of approving new drugs and biologics, as well as generic alternatives to marketed products. This kind of focus requires a strong background in pharmaceutical sciences, which cannot be learned on the job.

2) Core Functions. The FDA should review what is a core function, and strive for excellence in its core functions, devolving responsibilities to others wherever it can.

3) FDA's Role in Enforcing Patents. As part of the compromise which produced the Waxman-Hatch Act, the FDA was, in effect, given certain patent enforcement functions, through an exceedingly complex arrangement. Perhaps these should be revisited.

4) Equity in Orphan Drug Exclusivity. Currently, the FDA maintains a winner-takes-all system for Orphan Drug Exclusivity. In some settings, this system probably works well. But in the case of drugs already marketed for a well-recognized large indication or many indications, the current system if not changed discourages a small company from undertaking an economically risky but clinically-important study for a new use in an Orphan Disease.

5) Quality Assurance and Peer Review. In many arenas, FDA's authority is absolute, or nearly so. FDA would benefit from having an advisory council patterned after the National Cancer Advisory Board or comparable review groups at the National Institutes of Health.

While we look for ways to improve the Agency, we all owe a debt of gratitude for the public servants who work at FDA.

Introduction

I appreciate the invitation to appear before this committee. I come before the committee today with a perspective gained in both the government and private sector. In 1989, President Ronald Reagan appointed me to serve as the Director of the National Cancer Institute, a position I held until 1995, when I joined IVAX corporation, a pharmaceutical company based in Miami which develops, manufactures and sells both proprietary generic pharmaceuticals. In these roles, I have seen, first hand, how important the FDA is to the public health of the country. I have also seen how much FDA's approval or non-approval of a therapy can affect the priorities for biomedical research in the USA and abroad. During my time in government, the FDA awarded me its Harvey W. Wiley Commissioner's Medal, which is an honor that will always be important to me.

The sheer reach of the Agency, its capacity to affect our lives down to the most intimate details, the unique finality of its decisions (including decisions that can spell the difference between life and death for a small company), and the revolutionary advances in basic biomedical research over the past decade make it important that we periodically examine and re-assess FDA's mission.

I offer a few brief suggestions:

The Commissioner

First, the Commissioner should primarily focus on the speed and efficiency of approving new drugs and biologics, as well as generic alternatives to marketed products, since this is the most fundamental mission of the Agency. This kind of focus requires a strong background in pharmaceutical sciences. The speedy approval of safe and effective new drugs is essential if the American people are to derive the full benefits of basic research performed over the past decade, and supported at considerable costs to the taxpayer. Efficient drug approvals encourage small biotech companies to tackle and solve big problems, which might otherwise be avoided by a risk-averse, large company. By the same token, the efficient approval of generic drugs is necessary to ensure that useful older drugs are within society's ability to pay. Perhaps just as important, the approval of generic drugs serves as yet another incentive to the research-based pharmaceutical companies to commit their resources to develop new therapies that are substantial, as opposed to incremental or "me-too", improvements over existing therapies. Put another way, more reliance on creative research and development --- less reliance on creative marketing and promotion. While the Commissioner can count on excellent staff support on many levels, it is essential that he or she understand and personally enjoy the scientific and technical aspects of these processes.

Core Functions

Second, the Agency should review precisely what should and should not be defined as a core function, and shed distracting burdens by working out alternate arrangements for secondary functions. Certain kinds of Investigational New Drug Applications (INDA's), i.e. early studies often done by academicians in universities, could be delegated to state authorities, local universities, and others in much the same way that the Nuclear Regulatory Commission has devolved some radiation safety monitoring functions to other organizations. The Agency should focus its energies on reviewing those studies that are known to pertain, or are likely to pertain, to a new drug application of a drug by a credible sponsor. Similarly, in view of the role of industry and government-sponsored labs such as the National Institutes of Health, the FDA should carefully evaluate its own intramural research programs for duplication of effort.

Redefining FDA's Role in Enforcing Patents

Third, while a certain period of regulatory exclusivity may be appropriate and desirable for new drugs and biologics, perhaps we should re-visit the Agency's "patent-enforcement" responsibilities. Right now, the FDA is required to serve as a repository for essentially any patent that a given sponsor wishes to submit. These patents serve as a list in what is called the Orange Book to block or delay the approval of generic drugs and certain new drug forms. The

current system requires the Agency to maintain a patent list without determining their relevance or validity. Do we really want the Agency to have a direct or indirect role in enforcing patents? The Agency might better concentrate all of its resources on the scientific, medical, economic and most important, public health implications of the applications before it, whether they be full New Drug Applications or Abbreviated New Drug Applications. It might be best if patents were kept entirely within the responsibility of the Patent and Trademark Office. Disputes over patent infringement and patent validity, following an appropriate system of sponsor-notifications could then be handled exclusively by the federal courts. I have never heard of an FDA official seeking or desiring this role. The current system was part of a compromising in passing the Waxman-Hatch Act. Any changes need to be carefully thought out, and there should be wide discussion. But I believe the current system has opened the way to problems not originally envisioned by the Act.

Equity and Incentives in Orphan Drug Exclusivity

Fourth, the FDA should be encouraged to develop fair and constructive policies in the arena of Orphan Drug Exclusivity, when more than one sponsor has undertaken a meaningful clinical trials program, and when all parties have acted in good faith. Our current system is pretty much a "winner take-all"

outcome in terms of who can actually go to market. Perhaps this works well in some settings. But in the case of drugs already marketed for a well-recognized

large indication or many indications, the current system, if not changed, will certainly discourage a small company from undertaking an economically-risky but clinically important program for studying scientifically a new use for an indication in an Orphan Disease. Current FDA rules and policies unintentionally encourage and could reward the larger sponsor for waiting until the very last moment to put together a study and submit an application whose primary purpose is to block the smaller sponsor from entering the market for seven years.

Quality Assurance and Peer Review

Finally, during my time within the National Institutes of Health, I became convinced that an ongoing process of quality control and independent peer-review is absolutely essential for any taxpayer-supported scientific program. FDA should strengthen its current programs in this arena. FDA would benefit by having an advisory council somewhat similar to the National Cancer Advisory Board, which exists as an independent oversight body. In many arenas, FDA's authority is absolute -- or nearly so. If there is an administrative appeal, it will likely be influenced by the same staff who made the original decision. And even when the country is blessed with exceptionally gifted public servants, as is generally the case for the FDA at this time, it is unwise to ask a tiny number of individuals to

set policy in certain scientific disciplines for years, maybe decades, without serious and meaningful accountability to

independent review peer groups. The current advisory boards are generally not suitable for this purpose. The members of such an oversight panel should be appointed independently of program staff (after due consideration to avoid conflicts-of-interest) and should organize periodic site-visit reviews of major staff and operational programs at FDA. Specific and constructive critiques could then be passed on to the Commissioner for action, and an executive summary could be available to the public. Such Boards could provide a neutral forum for discussing science policy issues, and thereby provide a valuable service to the Agency. Such a system might conceivably make the Congress' own oversight functions easier. At present, particularly for small companies, disagreements and disputes about science policy are often argued out during a new drug application -- a process guaranteed to shed more heat then light. The current system offers substantial opportunities for misunderstandings, for ad hominem attacks, and for self-censorship in the case of small sponsors who may rightly or wrongly fear Agency retribution someday. The kind of peer-review boards I'm suggesting have existed within NIH for many years and work well.

Conclusion

FDA is an important Agency run by people of good-will. Its sheer importance requires an ongoing process of review, improvement, and quality control, and I hope these thoughts help advance this important process.